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OFFICE OF PETITIONS

In re Application of :
Miller et al. : CORRECTED
Application No. 10/726,268 : DECISION ON PETITION
Filed: 12/02/2003 : UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 03-40216-US :
:

This is a corrected decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed June 26, 2009, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.¹

The petition is DISMISSED.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR

¹ The decision of September 9, 2009, is hereby withdrawn and replaced by the instant corrected decision.

§§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Additionally, the intermediate nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the intermediate nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

After further review, and upon consulting with the Examiner, the Office has concluded that the petition does not comply with item (1) above. Specifically, it is noted that the amendment submitted with the present petition contains a reference to an incorrect provisional application, No. 60/408,606 (METHOD FOR REDUCING RUNOUT USING CLOCK HEAD PLAYBACK DURING SERVO WRITING), filed September 6, 2002, instead of intended provisional Application No. 60/408,066 (SYSTEM AND METHOD FOR A PLANNER), filed September 4, 2002.

Accordingly, before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, petitioner must file a renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), accompanied by either a Supplemental Application Data Sheet or an amendment (complying with 37 CFR 1.121, 37 CFR 1.76 and 37 CFR 1.33(b)).² No additional petition fee is required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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² The Office notes that 37 CFR 1.33(b) requires that amendments and other papers, except for written assertions pursuant to 37 CFR 1.27(c)(2)(ii), filed in an application must be signed by an appropriate party. Therefore, an ADS, supplemental ADS, or a substitute amendment submitted after the filing of an application must be signed in accordance with 37 CFR 1.33(b).

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Correspondence may also be submitted via the Electronic Filing System of the USPTO.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

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